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Mining in National Forests

CI-14

Current Information
Report 14

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Revised November 1979

MINING IN NATIONAL FORESTS
Protection of Surface Resources

Mineral Resources of the National Forest System

The 188-million-acre National Forest System is an important part of the Nation's natural resource base. As directed by the Organic Administration Act of 1897 and the Multiple Use-Sustained Yield Act of 1960, the National Forests are managed by the United States Department of Agriculture's Forest Service for continuous production of their renewable resources--timber, clean water, wildlife habitat, forage for livestock and outdoor recreation.

Although not renewable, minerals are also important resources of the National Forests. In fact, they are vital to the Nation's welfare. By accident of geography and geology, the National Forests contain much of the country's remaining stores of minerals--prime examples being the National Forests of the Rocky Mountains, the Basin and Range Province, the Cascade-Sierra Nevada Ranges, the Alaska Coast Range, and the States of Missouri, Minnesota, and Wisconsin. Less known but apparently good mineral potential exists in the southern and eastern National Forests.

Geologically, the National Forest System lands contain some of the most favorable host rocks for mineral deposits. Approximately 6.5 million acres are known to be underlain by coal. Approximately 45 million acres or one-quarter of the National Forest System lands have potential for oil and gas, while 300,000 acres have oil shale potential. Another 300,000 acres have known phosphate potential. A large proportion of the most promising areas for geothermal development occur in the National Forests of the Pacific Coast and Great Basin States.

Within the past few years, the energy shortage in this country has reminded us that the Nation's mineral resources are limited. As with oil supplies, there will undoubtedly be a considerable tightening of world supplies of many minerals. Such a trend is leading to considerable expansion of domestic mineral prospecting, exploration and development. Much of this increased activity is on the National Forests, where about 85 percent of the land is open to mineral exploration and development.

Forest Service Role in Minerals Management

In the Mining and Minerals Policy Act of 1970, Congress declared that it is the continuing policy of the Federal Government, in the national interest, to foster and encourage private enterprise in (among other goals) the development of domestic mineral resources and the reclamation of mined land. This Federal policy obviously applies to National Forest System lands.

The Forest Service recognizes the importance of National Forest System mineral resources to the well-being of the Nation and encourages bona fide mineral exploration and development. But it also recognizes its responsibilities to protect the surface resources of the lands under its care. Thus, the Forest Service is faced with a double task: to make minerals from National Forest lands available to the national economy and, at the same time, to minimize the adverse impacts of mining activities on other resources.

Land management planning, as mandated by the National Forest Management Act of 1976, is a principal tool for assuring that mineral resources are given proper consideration. Before plans are developed, specialists evaluate, among other resource activities, existing and potential mineral development. Planners and decisionmakers then formulate plans to minimize potential conflicts and maximize the various uses and values of the lands. Since minerals are usually hidden, relatively rare, and governed by certain preferential laws, the land management planning procedures provide for flexibility and availability of minerals activities where possible.

Minerals management on National Forest System lands requires interagency coordination and cooperation. Although the Forest Service is responsible for the management of the surface resources, the Bureau of Land Management (BLM) and the Geological Survey (USGS)--both in the Department of the Interior--are primarily responsible for management of Government-owned minerals. Since it is impossible to divorce mineral operations from surface management, the agencies have developed cooperative procedures to accommodate their respective responsibilities.

Authority for Mineral Activities

Mining and related activities on National Forest System lands are governed by specific laws that identify procedures and conditions under which prospecting, exploration, and development of minerals can be carried out.

THE GENERAL MINING LAW OF 1872. The Mining Law of 1872, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on the 140 million acres of National Forest set up by proclamation from the public domain. Under the 1872 law, and its principal amendment of July 23, 1955, qualified prospectors may search for mineral deposits on these "public domain" lands. A prospector, upon discovering a valuable mineral deposit, may locate a mining claim. Recording that claim in the local courthouse and with the appropriate BLM State Office affords protection from subsequent locators. A mining claimant is entitled to reasonable access to the claim for further prospecting, mining or necessary related activities, subject to other laws and applicable regulations.

After meeting rather rigorous specific requirements of the law, including a confirmation of the discovery of a valuable mineral deposit, a claimant may obtain legal title (patent) to the surface and mineral rights on the claim. A patent application must be filed with the appropriate State Office of the BLM. On National Forest lands, the Forest Service will conduct a mineral examination to determine if a valuable deposit has been found and, accordingly, recommend whether or not a patent should be granted. The Department of the Interior will consider the Forest Service's mineral report, plus information provided by the claimant, and determine whether a patent should be issued. If a patent is granted, legal title is conveyed, and thereafter the Forest Service has no authority over the lands conveyed.

MINERAL LEASING. Some minerals in National Forest System lands are disposable only by leases issued by the BLM. Operations under such leases are administered by the Geological Survey. These agencies cooperate with the Forest Service to assure that surface resources and other management concerns are coordinated with mineral activities.

The Mineral Leasing Act of February 25, 1920, as amended and supplemented, is commonly known as the "1920 Leasing Act." It applies to both the public domain and to National Forest lands reserved from the public domain. Mineral deposits subject to this act include coal, oil, gas, oil shale, other bitumens, potassium, sodium, phosphate, and--in Louisiana and New Mexico--sulphur. Applications for prospecting permits and leases under this act that involve National Forest System lands are referred by the BLM to the Forest Service for its recommendations and prescription of reasonable measures to be taken to protect the surface resources and reclaim disturbed lands. The Forest Service analyzes the possible environmental impacts that might be caused by mineral development. If significant environmental impacts are indicated, the Forest Service and the BLM may cooperate in preparing an environmental statement as required by the National Environmental Policy Act.

The Federal Coal Leasing Amendments Act of 1975 made a number of changes in leasing procedures for Federal coal. The act gives the Forest Service full consent authority for coal leasing in National Forest System lands.

The Mineral Leasing Act for Acquired Lands of August 7, 1947, makes "leasable" minerals on acquired National Forest System lands subject to provisions of the 1920 Leasing Act. Most of these acquired lands are in the East. Mineral leases for acquired lands may only be issued with the consent of the Secretary of Agriculture and subject to such terms and conditions as he may require to insure the adequate utilization of the lands for the purposes for which they were acquired. The Secretary of Agriculture has delegated his authority to the Chief of the Forest Service.

The President's Reorganization Plan of 1946 authorizes the Secretary of the Interior to lease the so-called "hardrock" minerals in acquired National Forest System lands. The Act of June 30, 1950, provides authority to issue leases in certain public lands in Minnesota. The minerals are the metallic and nonmetallic minerals that, in public domain lands, are locatable under the 1872 Mining Law. "Hardrock" mineral leasing is subject to the consent of the Secretary of Agriculture, through the Forest Service.

The Geothermal Steam Act of 1970 provides for leasing lands by the Department of the Interior for geothermal development, subject to the consent of the Forest Service on National Forest System lands.

COMMON VARIETIES OF MINERAL MATERIALS. The Forest Service has the authority to dispose of common varieties of mineral materials from lands under its jurisdiction and to specify the terms and conditions of operations. Common varieties include sand, stone, gravel, pumice, and other such materials without a unique property. A Forest Service permit is required prior to any exploration activity for these minerals. If a suitable deposit is located, the Forest Service weighs the relative values of the surface and mineral resources and determines if the site should be operated. The Forest Service sets the terms and conditions of operation, appraises the value of the resource, and enters into sale contracts. Most disposals are by free use permits to Federal, State, and local units of government for use in constructing and maintaining roads.

Regulations for Operating Under the 1872 Mining Law

From the time the National Forest System was established until the mid-1960's there was little public controversy about mining activities in the National Forests. As a heightened public awareness of environmental matters developed, concern began to be expressed that mineral operations were damaging the National Forests. In particular, the unrestricted operations permitted under the 1872 Mining Law caused widespread concern because of adverse impacts on other resources and on the environment.

Although the majority of miners and prospectors took steps to insure that surface resources were damaged as little as possible, there were numerous instances where careless and thoughtless prospecting and mining activities resulted in unnecessary road building; erosion and muddy streams because of inadequate surface drainage controls; careless disposal of garbage; abandoned equipment; scattered and poorly located piles of waste rock and mill tailings; and dangerous shafts and portals left uncovered, unfenced, and unmarked on National Forest System lands.

While public concern increased because of the adverse effects of unregulated mining and prospecting in the National Forests, looming prospects of mineral shortages promised increased prospecting and

mining activities. Congress, in 1969, passed the National Environmental Policy Act "to promote efforts which will prevent or eliminate damage to the environment" and further ordered that "to the fullest extent possible the...public laws of the United States shall be interpreted and administered in accordance with the policies set forth in the Act."

In line with this direction from Congress and the long identified need for surface resource protection, the Department of Agriculture began to reexamine existing laws. It determined that the Organic Administration Act of 1897 provided sufficient authority to bring about some positive regulation of mineral activities taking place on National Forest System lands under the 1872 Mining Law. The Organic Act provides that persons entering the National Forests for purposes of prospecting, locating, and developing mineral resources under the 1872 Mining Law must comply with the rules and regulations covering the National Forests.

Accordingly, in December 1973, the Secretary of Agriculture published in the Federal Register proposed regulations to protect the surface resources of the National Forests during mining and prospecting operations and rehabilitation of land afterwards. The proposed regulations were open to public comment and were revised in accordance with the many responsible comments received. The final regulations were published in the Federal Register August 28, and became effective September 1, 1974.

HIGHLIGHTS OF REGULATIONS. The regulations apply to the 140 million acres of National Forest System lands subject to location and entry under the Mining Law of 1872; that is, to the prospecting for and mining of metallic and nonmetallic minerals subject to those laws. They have no effect on the development of fossil fuels and other minerals subject to and already regulated under the mineral leasing laws or the laws governing the disposal of the "common variety" minerals.

The regulations provide the Forest Service and the mining community with the means of meeting their mutual environmental responsibilities to protect the surface resources of National Forest System lands. Among the main points covered by the regulations are the following:

* Anyone proposing prospecting or mining operations under the 1872 mining laws in the National Forest System that might cause disturbance of surface resources must give the local Forest Service office a "notice of intention to operate." If the authorized forest officer determines that such operations will cause a significant disturbance to the environment, the operator must submit a proposed plan of operations. Of course, if an operator knows the proposed operation will cause significant surface disturbance, a proposed plan should be submitted immediately. District Rangers can be helpful in preparing such plans, if necessary. The plan must describe such things as the type of operation proposed and how it will be conducted; proposed roads or access routes and means of transporation; and the time period during which the proposed activities will take place.

* All operations under the Mining Law of 1872 must be conducted, insofar as feasible, to minimize adverse environmental impacts on the National Forests, and take into consideration requirements for meeting Federal, State, and local air and water quality standards and solid waste disposal; harmony with scenic values; protection of fish and wildlife habitats; and minimization of road construction damage.

* The plan of operations must also show what steps the operator will take for feasible rehabilitation of the area when the prospecting or mining is completed.

* Upon filing the plan of operations, the operator may be required to furnish a bond commensurate with the expected cost of rehabilitating the area.

* The plan of operations must be approved by the authorized forest officer before any operations are conducted.

In analyzing each plan for approval, the forest officer will consider the economics of the operation along with other factors in determining the reasonableness of the requirements for surface resource protection. The Forest Service will assess the environmental impacts of the proposed operation and prepare any environmental impact statements that might be required under the National Environmental Policy Act.

Any operator who disagrees with the decision of the authorized forest officer in connection with administration of the regulations may appeal that decision, up to the Regional Forester level. The decision of the Regional Forester is the final administrative appeal decision. Aggrieved parties are thus provided quick access to the courts to seek redress.

APPLICATION TO WILDERNESS. The regulations apply also to mineral-related activities in wilderness and primitive areas. The Act that created the National Wilderness Preservation System in 1964 specified that prospecting for minerals and location of mining claims would be permitted in wilderness areas through December 31, 1983. Although prospecting and mining are authorized, they must be conducted in a manner as compatible as possible with preservation of the wilderness character.

Thus, the standards under which the regulations are applied in wilderness are somewhat stricter than on other lands. Special limitations and restrictions have been placed on the use of mechanized equipment because of its potential for causing surface disturbance and other impacts on the wilderness environment.

The Administration, in 1979, concluded the Roadless Area Review and Evaluation (RARE II) process by allocating 62 million acres of roadless and undeveloped National Forest System lands to one of three categories: 15.4 million acres were recommended to Congress for wilderness designation; 36 million acres were allocated to multiple uses other than wilderness; and 10.6 million acres were held for further planning. Those areas recommended for wilderness and further planning are managed, to the extent that the Forest Service has such authority, so as to protect the wilderness character until final decisions or designations are made. The regulations are applied to these areas in the same way as described for wilderness.

QUESTIONS AND ANSWERS

Q: What is the purpose of the regulations under 36 CFR 252, issued by the Forest Service, concerning mining and prospecting operations in National Forests?

A: The regulations are intended to protect the nonmineral values of National Forest System lands against unnecessary or unreasonable damages from prospecting, exploration, development, mining, and processing operations carried out under the authority of the Mining Law of 1872, as amended. They are intended to provide that protection without unreasonably inhibiting or restricting the activities of prospectors and miners.

Q: What is the authority for the Forest Service to issue these regulations?

A: The Organic Administration Act of June 4, 1897, authorizes the Secretary of Agriculture to regulate occupancy and use of the National Forests for the protection and management of their surface resources. All National Forest users, including prospectors and miners, are required to observe these regulations.

Q: When were these regulations issued?

A: On August 28, 1974.

Q: Why did the Forest Service issue regulations at that time, when mineral operations had been carried out in National Forests for 70 years without them?

A: The Forest Service was given added direction through the National Environmental Policy Act of 1969 to promote efforts to prevent or eliminate damage to the environment. During the 1960's and early 1970's there was increased prospecting and mining activity on the National Forests because of present or anticipated world mineral shortages. All indications were that such mineral activities on National Forests would increase intensively in the future, resulting in increased possibilities for surface resource damage.

Q: Do the regulations affect the mining laws and mining regulations of the Department of the Interior or its management of the mineral resources?

A: No. Those laws and regulations relate to the search for minerals, their discovery, extraction, and processing. The Forest Service regulations apply to the protection of nonmineral resources affected by mineral-related activities. The Department of the Interior manages federally owned locatable and leasable minerals on National Forest lands. The Forest Service is charged with the management and protection of the surface resources only.

Q: Do these regulations apply to all minerals on all lands administered by the Forest Service?

A: No. They apply only to "locatable minerals" on National Forest System lands open to operation under the General Mining Law of 1872, as amended, and to operations conducted under those laws. They cover those lands reserved from the public domain for National Forest purposes and not otherwise withdrawn from their operation. They also apply to a very small portion of lands acquired by the Federal Government for National Forest purposes. Nearly all National Forest lands that are open to the mining laws, and thus subject to these regulations, are west of the Mississippi River, including Alaska.

Q: Are there any laws or regulations that cover other mineral activities on the remaining National Forest lands?

A: Yes. The Mineral Leasing Act of 1920, as amended and supplemented, provides for the disposal of the fossil fuels, such as coal, oil, gas, oil shale, and related bitumens, as well as sodium, potassium, and sulfur (the latter only in certain States) from public domain National Forests. The Mineral Leasing Act for Acquired Lands of 1947 provides for the disposal of federally owned leasable minerals on acquired National Forest System lands.

Q: Just exactly what is meant by an operating plan?

A: Operating plans, as required by these regulations, are documents by which mineral operators identify themselves, describe the work they intend to do, where and when they intend to do it, the nature of any proposed disturbance of surface resources, and the steps they will take to protect those resources. An approved operating plan is basically an agreement between the Forest Service and the operator. The operator agrees to observe necessary and reasonable precautions, spelled out in this plan, to reduce damage to surface resources during operations activities and to rehabilitate disturbed areas as and when feasible. In turn, the Forest Service agrees that protection of surface resources will be adequate if operations are carried out in accordance with the approved plan.

Q: When is an operating plan necessary?

A: A plan of operations is required from anyone whose proposed operations, under the 1872 Mining Law, would cause "significant disturbance of the surface resources." An operator who is unsure if the proposed operations might disturb surface resources should file a "notice of intention to operate" with the Forest Service. It should describe briefly what the operator intends to do, where and when it is to be done, and routes and methods of access to the site. The Forest Service will analyze the proposal and within 15 days notify the operator as to whether or not an operating plan will be necessary.

Q: What is meant by a "significant" disturbance of surface resources?

A: In general, operations using mechanized earthmoving equipment cause significant disturbance. Pick and shovel operations normally do not. Neither will explosives used underground, unless caving to the surface will result. Use of explosives on the surface generally will be considered to cause significant disturbance. Almost without exception, road and trail construction and tree-clearing operations will cause significant surface disturbance. Disturbance by a particular type of operation on flat ground covered by sagebrush, for example, might not be considered significant. But, that same sort of operation in a high alpine meadow or near a stream could cause highly significant surface resource disturbance. The determination of what is significant, thus, depends on a case-by-case evalutaion of proposed operations and the kinds of lands and other surface resources involved.

Q: What is the purpose of the bond requirement in the regulations?

A: The requirement for a bond is to assure compliance with the reclamation provision of the regulations and operating plans. The amount of the bond will be determined by the estimated cost of the work needed to reasonably reclaim surface resources disturbed by operations. If the operators fail to do the work, the bond or deposit will be used by the Forest Service to do the work or have it done.

Q: What action will the Forest Service take if miners and prospectors conduct operations on National Forest lands without an approved operating plan?

A: If the operators cause significant surface resource disturbance, a Forest Service officer will contact the operators, seeking cooperation to work up an operating plan. In cases where operators refuse to cooperate, the Forest Service will, as a last resort, take whatever legal action may be required to end unnecessary or unreasonable damage to surface resources, to reclaim disturbed areas, and seek payment for damages when appropriate. The Forest Service will first, however, make every effort to secure the cooperation of the operators.

Q: Do most proposed operations require preparation of environmental impact statements?

A: No. In most cases environmental impact statements are not necessary. When they are, they generally are for new roads that may be needed across National Forest lands for access to mines, mills, and similiar operations. Preparation of environmental impact statements is the responsibility of the Forest Service and other involved agencies.

Q: Do these regulations apply to National Forest wilderness?

A: Yes. In order to protect wilderness values, the standards under which the regulations will be applied in designated wilderness are somewhat stricter than on other lands. Operators may enter a wilderness and prospect for minerals under the Wilderness Act of 1964, but such activities must be carried out in a manner compatible with the preservation of the regulations. For example, special limitations and restrictions have been placed on the use of mechanized equipment.

CURRENT INFORMATION REPORTS

No. 1 MINERAL KING . . . . . February 1969
(out of print)

No. 2 LUMBER & PLYWOOD SUPPLY. . . . . March 1969
(out of print)

No. 3 GRAZING FEES ON NATIONAL FOREST RANGE. . . June 1969
(out of print)

No. 4 FOREST SERVICE TIMBER APPRAISALS. . . . . July 1969

No. 5 MEETING FUTURE NEEDS FOR SOFTWOOD LUMBER AND PLYWOOD. . . . . September 1970

No. 6 TIMBER MANAGEMENT FOR A QUALITY ENVIRONMENT (out of print) . . . . . May 1971

No. 7 FOREST SERVICE RESPONSE TO RECOMMENDATIONS OF FORESTRY DEANS. . . . . June 1972

No. 8 OUTLOOK FOR MEETING FUTURE TIMBER DEMANDS. December 1972

No. 9 PROPOSED NEW WILDERNESS STUDY AREAS. . . . January 1973
(out of print)

No. 10 FOREST-RANGE ENVIRONMENTAL STUDY. . . . . May 1973

No. 11 NEW WILDERNESS STUDY AREAS. . . . . October 1973
(Supersedes CI Report No. 9)

No. 12 NEW NATIONAL FORESTS FOR ALASKA . . . . . February 1974
(out of print)

No. 13 HIGHLIGHTS OF THE ENVIRONMENTAL PROGRAM FOR THE FUTURE (out of print). . . . . August 1974

No. 14 MINING IN NATIONAL FORESTS. . . . . January 1975
(Revised November 1979)

No. 15 STRETCHING THE NATION'S TIMBER . . . . . October 1975

No. 16 THE NATIONAL FOREST MANAGEMENT ACT OF 1976 . . . . . December 1976

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federal register

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

NATIONAL FORESTS SURFACE USE UNDER U.S. MINING LAWS

Regulations are hereby adopted concerning the use of the surface of National Forest System lands by persons operating under the United States mining laws of 1872, as amended. Parts 251 and 293 are amended and a new Part 252 is added.

The public was afforded an opportunity to comment on proposed rulemaking published on December 19, 1973 (38 FR 34817) and on July 16, 1974 (39 FR 26038). Respondents included Government agencies (National, State, and local), conservation organizations, mining associations, United States Senators and Congressmen, and individuals directly or indirectly concerned with mineral operations. The proposed regulations were also the subject of oversight hearings by the Public Lands Subcommittee of the Committee on Interior and Insular Affairs of the House of Representatives.

Comments ranged from total opposition to unqualified support of the proposals. Critical comments were in the majority. Many persons suggested changes or improvements in both wording and substance.

Although many respondents objected to the operating plan requirement, the essence of adequate regulation is development of operating plans which reflect both the necessities for environmental protection and for the use of surface resources in connection with mineral operations. A provision for operating plans is part of the regulations.

A major concern expressed by the mining industry, and noted by the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs, is the possibility of unreasonable enforcement of the regulations, with resulting cost increases that could make otherwise viable mineral operations prohibitively expensive. The Forest Service recognizes that prospectors and miners have a statutory right, not mere privilege, under the 1872 mining law and the Act of June 4, 1897, to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production. Exercise of that right may not be unreasonably restricted. Specific provision has been made in the operating plan approval section of the regulations charging Forest Service administrators with the responsibility to consider the economics of operations, along with the other factors, in determining the reasonableness of the requirements for surface resource protection.

Many comments objected to the time provided for Forest Service response to proposed operating plans. No change has been made in these provisions since the time allowances are reasonable as outside limits. Even so, Forest Service administrators are expected to process operating plans promptly with the objective of responding, on the average, in half of the time allowed.

The requirement for a minimum bond of $2,000 for any activities subject to operating plans was the provision most heavily criticized. Many respondents pointed to the discriminatory effect and negative impact on small miners and prospectors having relatively limited means. The bond provision has been changed to reduce discriminatory effects and to be more specific as to coverage, but remain responsive to the need to maintain the responsibilities of operators for reclamation and mitigation of the effects of surface disturbing operations.

Some respondents felt that all information and data submitted on proposed operations should be subject to full public disclosure. The rule of reasonableness is particularly applicable since proprietary data and competitive rights are involved. The section on availability of information to the public recognizes these factors.

Language has been modified to make more clear that the intent of these regulations is protection of the surface resources on National Forest System lands.

A number of comments noted the lack of a provision for a "notice of intent to operate." Such a provision has been included in the regulations.

The provision concerning data to be furnished in an operating plan has been simplified and is clarified to state that the Forest Service, rather than the operator, has the responsibility for analyzing the environmental impacts that may be expected from proposed operations.

Many respondents criticized the language about environmental impact statements and appeals procedures. Those sections have been clarified. The number of levels of appeal provided is small in order to allow aggrieved parties quick access to the courts to seek redress.

Seasonal factors in most of the western mountains preclude prospecting and exploration during winter and early spring. A 120-day grace period is provided within which to file required operating plans in the case of operations underway on the effective date of the regulations. Under the circumstances, the regulations should not have significant effect on ongoing operations during the remainder of this operating season.

A Final Environmental Statement, prepared in accordance with section 102(2)(c) of the National Environmental Policy Act of January 1, 1970 (42 U.S.C. 4332(2)(C)), was filed with the Council on Environmental Quality on July 16, 1974. The statement discussed the environmental impact of issuing the regulations as proposed.

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The regulations will be effective September 1, 1974.

The amendment of Chapter II follows:

PART 251—LAND USES

§ 251.12 [Revoked]

1. Part 251 is amended by revoking § 251.12.

PART 252—MINERALS

2. A new Part 252 is added to read as follows:

Sec.
252.1 Purpose.
252.2 Scope.
252.3 Definitions.
252.4 Plan of operations—notice of intent—requirements.
252.5 Plan of operations—approval.
252.6 Availability of information to the public.
252.7 Inspection, noncompliance.
252.8 Requirements for environmental protection.
252.9 Maintenance during operations, public safety.
252.10 Cessation of operations, removal of structures and equipment.
252.11 Prevention and control of fire.
252.12 Access.
252.13 Bonds.
252.14 Appeals.
252.15 Operations within National Forest Wilderness.

AUTHORITY: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), unless otherwise noted.

§ 252.1 Purpose.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21–54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

§ 252.2 Scope.

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however;* That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a–482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

§ 252.3 Definitions.

For the purposes of this part the following terms, respectively, shall mean

(a) *Operations.* All functions, work and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.

(b) *Operator.* A person conducting or proposing to conduct operations.

(c) *Person.* Any individual, partnership, corporation, association, or other legal entity.

(d) *Mining claim.* Any unpatented mining claim or unpatented millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

(e) *Authorized officer.* The Forest Service officer to whom authority to review and approve operating plans has been delegated

§ 252.4 Plan of Operations—Notice of Intent—Requirements.

(a) Except as provided in paragraph (2) of this section, a notice of intention to operate is required from any person proposing to conduct operations which might cause disturbance of surface resources. Such notice of intention shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. If the District Ranger determines that such operations will likely cause significant disturbance of surface resources, the operator shall submit a proposed plan of operations to the District Ranger.

(1) The requirements to submit a plan of operations shall not apply (i) to operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest purposes, (ii) to individuals desiring to search for and occasionally remove small mineral samples or specimens, (iii) to prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study, (iv) to marking and monumenting a mining claim and (v) to subsurface operations which will not cause significant surface resource disturbance.

(2) A notice of intent need not be filed (i) where a plan of operations is submitted for approval in lieu thereof, (ii) for operations excepted in paragraph (1) of this section from the requirement to file a plan of operations, (iii) for operations which will not involve the use of mechanized earthmoving equipment such as bulldozers or backhoes and will not involve the cutting of trees. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations and the method of transport. If a notice of intent is filed the District Ranger will, within 15 days of receipt thereof, notify the operator whether a plan of operations is required.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 252.4 (a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to avoid such damage. Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations shall not apply (1) to operations excepted in § 252.4(a) or (2) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 252.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 252.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 252.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimiz-

ing unforeseen significant disturbance of surface resources. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations prior to approving the operating plan, (2) whether the disturbance is or probably will become of such significance as to require modification of the operating plan in order to meet the requirements for environmental protection specified in § 252.8 and (3) whether the disturbance can be minimized using reasonable means. Lacking such determination that unforeseen significant disturbance of surface resources is occurring or probable and that the disturbance can be minimized using reasonable means, no operator shall be required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan until a modified plan is approved, unless the immediate superior of the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable injury, loss or damage to surface resources and advises the operator of those measures needed to avoid such damage.

(f) Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development, or processing, and on the scope of operations (such as size of operations, contruction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

§ 252.5 Plan of Operations—Approval.

(a) Operations shall be conducted in accordance with an approved plan of operations, except as provided in section (b) of this section and in § 252.4(a), (b), and (e). A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within thirty (30) days of such receipt, analyze the proposal, considering the economics of the operation along with the other factors in determining the reasonableness of the requirements for surface resource protection, and;

(1) Notify the operator that he has approved the plan of operations, or

(2) Notify the operator that the proposed operations are such as not to require an operating plan; or

(3) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(4) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however,* That days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 252.4(f).

(b) Pending final approval of the plan of operations, the authorized officer will approve such operations as may be necessary for timely compliance with the requirements of Federal and State laws, so long as such operations are conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 252.8.

(c) A supplemental plan or plans of operations provided for in § 252.4(d) and a modification of an approved operating plan as provided for in § 252.4(e) shall be subject to approval by the authorized officer in the same manner as the initial plan of operations: *Provided, however,* That a modification of an approved plan of operations under § 252.4(e) shall be subject to approval by the immediate superior of the authorized officer in cases where it has been determined that a modification is required.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic conditions and special exploration and development systems, techniques, and equipment, and with respect to mineral values, mineral resources, and mineral reserves. Further, the operator may request the Forest Service to arrange for similar consultations with appropriate agencies of the U.S. Department of the Interior for a review of operating plans.

§ 252.6 Availability of information to the public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1–1.6 and 36 CFR 200.5–200.10. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination. Information and data to be withhold from public examination may include, but is not limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

§ 252.7 Inspection, noncompliance.

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his approved plan of operations and the noncompliance is unnecessarily or unreasonably causing injury, loss or damage to surface resources the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days: *Provided, however,* That days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

§ 252.8 Requirements for Environmental Protection.

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) *Air Quality.* Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* Operartor shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the en-

vironment and the forest surface resources. All tailings, dumpage, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) *Scenic Values.* Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries and Wildlife Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) *Roads.* Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations (1) shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) *Reclamation.* Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

(1) Control of erosion and landslides;

(2) Control of water runoff;

(3) Isolation, removal or control of toxic materials;

(4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and

(5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

§ 252.9 Maintenance during operations, public safety.

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

§ 252.10 Cessation of operations, removal of structures and equipment.

Unless otherwise agreed to by the authorized officer, operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes (1) verification of intent to maintain the structures, equipment and other facilities, (2) the expected reopening date, and (3) an estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

§ 252.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

§ 252.12 Access.

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 252.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

§ 252.13 Bonds.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 252 8(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 252.4 (d) and (e) of this part, the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 252.8(g), the authorized officer will notify the operator that performance under the bond has been completed: *Provided, however,* That when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.

§ 252.14 Appeals.

(a) Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file with the authorized officer a written statement setting forth in detail the respects in which the decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, or is otherwise in error. No such appeal will be considered unless it is filed with the authorized officer within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of appellant's statement, the authorized officer shall promptly prepare his own statement explaining his decision and the reasons therefor and forward the statements and record to his immediate superior for review and decision. The decision of the Regional Forester shall be the final administrative appeal decision.

(b) At the time appellant files his written statement of appeal he may request and shall be afforded an opportunity to present his views orally to the reviewing Forest Service officer.

(c) If the reviewing Forest Service officer considers the record inadequate to support a decision on the appeal, he may provide for the production of such additional evidence or information as may be appropriate or may remand the case with appropriate instructions for further action.

(d) The official files of the Forest Service relating to these appeals and any testimony and documents submitted by the parties on which the decision of the authorized officer was based constitute the record in the appeal. The authorized officer shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to his immediate superior for review. The Forest Service shall make the record available to the appellant upon request.

(e) On or before the expiration of forty-five (45) days after his receipt of the record the reviewing officer shall make his decision: *Provided, however,* That if more than forty-five (45) days are required for a decision after the record is received, the reviewing officer shall notify the parties to the appeal and specify the reason for delay. The decisions of reviewing officers shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based.

(f) A decision of the authorized officer from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the reviewing officer. The reviewing officer shall promptly rule on requests for stays. The decision of the Regional Forester on requests for stays shall constitute the final administrative appeal decision.

§ 252.15 Operations within national forest wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 252.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 252.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 252.10 and restore the surface in accordance with the requirements in § 252.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

(78 Stat. 890) (16 U.S.C. 1131–1136))

PART 293—WILDERNESS-PRIMITIVE AREAS

3. The regulations of Part 293 were transferred from Part 251 on March 5, 1973 (38 FR 5851). The new Part 293 is further amended by revising §§ 293.13, 293.14 and 293.15. Regulations applicable to activities under the 1872 mining law in National Forest Wilderness now appear in Part 252 rather than Part 293.

Sections 293.13–293.15 are revised to read as follows:

§ 293.13 Access to valid occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.14 Mineral leases and mineral permits.

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Minerals Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601–604).

§ 293.15 Gathering Information about Resources other than Minerals.

(a) The Chief, Forest Service, shall allow any activity, for the purpose of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest Wilderness is subject to the regulations in Part 252 of this title.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with any activity for the purpose of gathering information about resources, other than minerals, except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section (4)(d)(4)(1) of the Wilderness Act, will be permitted when and as authorized by the President.

(30 Stat. 35, as amended (16 U.S.C. 551); 78 Stat. 890 (16 U.S.C. 1131–1136).

PAUL A. VANDER MYDE,
Deputy Assistant Secretary for Conservation, Research and Education.

AUGUST 23, 1974.

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